

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LYNNEVE NUNEZ,

Plaintiff,

vs.

TERRY CHARLES HARPER, et al.,

Defendants.

Case No. 2:13-cv-0392-GMN-NJK

ORDER

(Docket No. 59)

Pending before the Court is Defendants' Emergency Motion to Name an Additional Expert Witness. Docket No. 59.<sup>1</sup> The Court has considered the motion, response, and reply. Docket Nos. 59, 70, 71. The Court finds that this motion is appropriately resolved without oral argument. *See* Local Rule 78-2.

**I. BACKGROUND**

This is a personal injury action arising out of a motor vehicle accident that occurred on November 15, 2012. Docket No. 1-1 (Complaint). According to Plaintiff, Defendant Terry Charles Harper, a truck driver for Defendant Paho Express, Inc., struck Plaintiff Lynneve Nunez's vehicle while driving on Las Vegas Boulevard. *Id.* As a result of the accident, Plaintiff alleges that she sustained injuries to her right foot, right hip, right shoulder, back, abdomen, and nose. *Id.* Plaintiff filed the instant action in the District

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By Minute Order of April 30, 2014, the Court determined that the instant motion did "not qualify as an Emergency Motion[.]" Docket No. 61.

1 Court for Clark County, Nevada, on February 5, 2013. *Id.* Thereafter, on March 7, 2013, Defendants  
2 removed the case to this Court. Docket No. 1.

3 On April 30, 2013, the Court approved the parties' Discovery Plan and Scheduling Order. Docket  
4 No. 15. The expert disclosure deadline was set for October 7, 2013, and the rebuttal expert disclosure  
5 deadline was set for December 6, 2013. *Id.* On October 24, 2013, Defendants filed a motion to extend  
6 discovery deadlines. Docket No. 22. The Court held a hearing on the matter and, on November 7, 2013,  
7 the Court extended the expert disclosure deadline to January 5, 2014, and the rebuttal expert deadline to  
8 February 4, 2014. Docket No. 30. On February 14, 2014, the parties filed a stipulation to extend discovery  
9 deadlines, which was granted by the Court. Docket No. 41. That stipulation provided for an extension of  
10 the discovery deadline, the dispositive motion deadline, and the pretrial order deadline, but did not extend  
11 the deadline to disclose experts. *See id.*, at 6 (“[t]his stipulation does not extend any expert deadlines that  
12 have already expired”).

13 In the instant motion, while acknowledging that the deadline for disclosing experts has long since  
14 expired, Defendants “request leave to name an additional expert witness to address the reasonableness and  
15 necessity of Plaintiff’s alleged medical expenses.” Docket No. 59, at 4. Defendants admit that, prior to  
16 the expiration of the deadline for disclosing experts, they “chose not to retain an expert to evaluate  
17 Plaintiff’s medical billing[.]” *Id.*, at 5. Defendants state that this decision was made at a time when  
18 Plaintiff’s medical expenses were estimated at “approximately \$150,000.00.” *Id.* Now that Plaintiff’s  
19 alleged medical expenses have “significantly increased[.]” Defendants contend that the Court should extend  
20 the deadline for expert disclosures, and provide Defendants “the opportunity” to retain a “medical billing  
21 expert to review Plaintiff’s alleged expenses.” *Id.* Defendants further argue that they “should not be  
22 prevented from fully assessing Plaintiff’s allegations merely because she incurred extensive medical  
23 expenses after the expert disclosure deadlines.” *Id.*

24 Plaintiff counters that “[s]ince Defendants disputed Plaintiff’s medical expenses from the outset of  
25 this litigation,” Defendants could have easily designated a medical billing expert “regardless of when  
26 Plaintiff disclosed additional (and ongoing) medical treatment.” Docket No. 70, at 7. Plaintiff further  
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1 states that “Defendants stated as an affirmative defense that ‘[t]his answering defendant alleges that the  
2 plaintiff failed to mitigate her damages.’” *Id.*, (quoting Docket No. 7., at 5). Finally, Plaintiff points out  
3 that Defendants “lacked diligence because they waited a year and had multiple opportunities to designate  
4 an appropriate expert” as to the “reasonableness and necessity of Plaintiff’s medical expenses, an issue in  
5 nearly every motor vehicle accident case.” Docket No. 70, at 6-7.

## 6 **II. DISCUSSION**

7 “A scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly  
8 disregarded by counsel without peril. The district court’s decision to honor the terms of its binding  
9 scheduling order does not simply exalt procedural technicalities over the merits of [the parties’] case.  
10 Disregard of the order would undermine the court’s ability to control its docket, disrupt the agreed-upon  
11 course of the litigation, and reward the indolent and the cavalier.” *Johnson v. Mammoth Recreations, Inc.*,  
12 975 F.2d 604, 610 (9th Cir. 1992) (internal citation and quotations omitted).

13 A motion to extend deadlines in the Court’s scheduling order must be supported by a showing of  
14 “good cause” for the extension. Local Rule 26-4; *see also Johnson*, 975 F.2d at 608-09.<sup>2</sup> The good cause  
15 inquiry focuses primarily on the movant’s diligence. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271,  
16 1294-95 (9th Cir. 2000). Good cause to extend a discovery deadline exists “if it cannot reasonably be met  
17 despite the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at 609. While prejudice to the  
18 opposing party may also be considered, where the movant “fail[s] to show diligence, ‘the inquiry should  
19 end.’” *Coleman*, 232 F.3d at 1295 (quoting *Johnson*, 975 F.2d at 609). The Court has broad discretion in  
20 supervising the pretrial phase of litigation. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.  
21 2002).

22 In addition, requests to extend a discovery deadline filed less than 21 days before the expiration of  
23 that particular deadline must be supported by a showing of excusable neglect. *See* Local Rule 26-4.  
24 Excusable neglect encompasses situations in which the failure to comply with a filing deadline is

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27 The “good cause” standard outlined in Local Rule 26-4 is the same as the standard governing  
28 modification of the scheduling order under Fed. R. Civ. P. 16(b).

1 attributable to negligence. *Lemoge v. U.S.*, 587 F.3d 1188, 1195 (9th Cir.2009). There are at least four  
 2 factors in determining whether neglect is excusable: (1) the danger of prejudice to the opposing party; (2)  
 3 the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4)  
 4 whether the movant acted in good faith. *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir.  
 5 2000) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). The  
 6 determination of whether neglect is excusable is ultimately an equitable one, taking account of all relevant  
 7 circumstances surrounding the party's omission. *Pioneer*, 507 U.S. at 395. This equitable determination  
 8 is left to the discretion of the district court. *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004).

9 Defendants insist that they "should not be prevented from fully assessing Plaintiff's allegations  
 10 merely because she incurred extensive medical expenses after the expert disclosure deadlines." Docket 59,  
 11 at 5. This misstates the factual record. At no time prior to the expiration of the expert disclosure deadline  
 12 were Defendants "prevented" from hiring an expert to evaluate Plaintiff's medical expenses. Docket No.  
 13 70, at 7. Rather, and by their own admission, Defendants "chose not to retain an expert to evaluate  
 14 Plaintiff's medical billing[.]" Docket No. 59, at 5. The fact that Defendants are now aware that Plaintiff's  
 15 alleged medical expenses have significantly increased, the reasonableness and necessity for which is "an  
 16 issue in nearly every motor vehicle accident case[.]" Docket No. 70, at 6-7, does not demonstrate that  
 17 Defendants acted diligently.

18 The Court therefore finds that Defendants have not shown the diligence required for a finding of  
 19 "good cause." This ends the Court's inquiry into whether an extension should be granted. *See Coleman*,  
 20 232 F.3d at 1295.<sup>3</sup>

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26 Because Defendants have failed to demonstrate good cause for the extension, the Court need not  
 27 reach the issue of excusable neglect. In looking to the relevant factors, however, the Court also notes  
 28 that excusable neglect does not exist here.

**IT IS HEREBY ORDERED** that Defendants' Emergency Motion to Name an Additional Expert Witness (Docket No. 59) is **DENIED**.

DATED: June 20, 2014.

  
NANCY J. KOPPE  
United States Magistrate Judge